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Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1470

STATE OF LOUISIANA,

Petitioner,

versus

WILLIAM AUGUST MORA, Jr.

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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OPINIONS BELOW

The majority opinion of the Louisiana Supreme Court, as well as the dissenting opinions, are set out in the Appendix to this brief.

JURISDICTION

The judgment of the Louisiana Supreme Court in the instant case setting aside the conviction of William August Mora, Jr. for possession of marijuana was rendered on January 20, 1975. The State of Louisiana's Application For Rehearing was denied on February

21, 1975, as is shown by the minute entry of that date which appears in the Appendix to this petition.

QUESTIONS

1. Whether a public school teacher who searches property entrusted to him for safe keeping by a student and seizes incriminating evidence found therein, should be treated as a private person and hence not subject to Fourth Amendment restrictions?

2. Assuming that the Fourth Amendment applies to public school teachers as well as policemen is a search by a public school teacher which is based upon less than probable cause yet more than mere unfounded suspicion "reasonable" under the Fourth Amendment?

STATEMENT OF THE CASE

The District Attorney for the Parish of St. Mary charged William August Mora, Jr. with possession of marijuana in violation of La. R.S. 40:966. Prior to trial Mr. Mora filed a Motion To Suppress Evidence, which was denied. He was tried, convicted of possession marijuana, and sentenced to six months in St. Mary Parish jail. He appealed to the Louisiana Supreme Court, which maintained the Motion to Suppress Evidence and reversed his conviction in a four to three decision. The State of Louisiana is seeking a Writ Of Certiorari from this Honorable Court to review the judgment of the Louisiana Supreme Court erroneously interpreting major decisions of the United States

Supreme Court, the application of the exclusionary rule, and the historical basis of the Fourth Amendment.

ARGUMENT

Mr. Coy Scott, a teacher at Franklin High School in Franklin, Louisiana was in charge of a physical education class on March 22, 1973. In this class, each student was required to change into gym clothes. In order to protect students from the theft of valuables while in class, each student was assigned a small canvas bag in which to place any valuables in his possession. This small bag was in turn placed in a larger bag which was locked in the office of the teacher.

On the day in question, this procedure was followed by the defendant William Mora in the presence of Mr. Scott. Mr. Scott became suspicious when the defendant turned his back to him in attempting to place an abnormally oversized wallet in the small canvas bag. Mr. Scott also testified that at the time of the incident the defendant appeared highly nervous and that the defendant was friendly with a number of students who Mr. Scott knew to be connected with drug use. The defendant dropped this canvas bag containing his wallet into a larger bag which Mr. Scott in turn locked in his office.

Due to his earlier suspicions, Mr. Scott later examined the defendant's wallet still inside the canvas bag. Inside the wallet he found a green vegetable like substance which he believed to be marijuana. Mr. Scott testified that he was somewhat familiar with the

nature of marijuana because of drug education lectures which had been given in his school.

Mr. Scott called Mr. Brumfield the principle of the school. With Mr. Brumfield was Mr. Pontiff, a school supervisor and the person in charge of the drug education program for the St. Mary Parish school system. Mr. Pontiff testified that the substance found looked like the marijuana he had seen in his drug program experience. In the office Mr. Brumfield found in the wallet, identification which belonged to William Mora, the defendant. Mr. Mora, the defendant's father was told of what had happened and advised to see Captain Keenze, the St. Mary Parish Sheriff's Department Juvenile Officer about the matter. Mr. Pontiff and Mr. Brumfield brought the wallet and the marijuana to the sheriff's office and turned the whole matter over to Captain Keenze, the juvenile officer. Captain Keenze found that William Mora was seventeen and hence an adult under the criminal law of Louisiana. William Mora was arrested for possession of marijuana and prosecuted as an adult.

William Mora filed a motion to suppress the marijuana which was denied. He was tried. He was convicted. He appealed and the Louisiana Supreme Court reversed his conviction and held that the Motion to Suppress should have been granted and the evidence excluded.

Issue I

At the heart of the Louisiana Supreme Court's decision is the reasoning that under the Fourth Amend-

ment a public school teacher must be held to the same strict rules as is a policeman. As a result when evidence is seized by a public school teacher and the state seeks to introduce that evidence against the student in a criminal proceeding the search and seizure must conform to the warrant requirement of the Fourth Amendment or fall within one of its exceptions.

The State of Louisiana concedes that in light of the case of *Tinker* v. *Des Moines*, 89 S.Ct. 733 (1969) that public school students are protected by the Fourth Amendment in as well as out of school. However, the State of Louisiana is of the respectful belief that the Louisiana Supreme Court committed error when it held that a public school teacher is a "government agent" similar in function to a policeman and hence subject to the strict requirements of the Fourth Amendment. In reaching this result the Louisiana Supreme Court reasoned that in the same manner that the policeman has the responsibility and duty to enforce the laws of the state, the public school teacher has the responsibility and duty to enforce the regulations of the school system. In addition, the regulations of a school system, like the laws of society are both designed to protect the many from the irrational acts of the few and that therefore the function of the policeman and the teacher are similar. At first blush, it would seem that for Fourth Amendment purposes the public school teacher should be held to the same test of "reasonableness" as the police officer, that of "probable cause." The logic of this argument however, is blunted by a comparative analysis of the relationship which exists between a police officer and citizens versus a public school teacher and student.

The main function of the policeman in society is that of law enforcement. He represents the state's power to control the lives of its citizens. The public school teacher, on the other hand, functions within society and the school as a teacher. This is his main function. Only secondarily does he enforce the regulations and rules of the school. The school official is not trained in the complex issues of constitutional and criminal law as is the police officer. The objective of the school official is to instruct and educate, not to arrest and amass evidence of crime.

It is this line of reasoning which forms the heart and core of the exclusionary rule and the corresponding distinction between police conduct and the conduct of private citizens. Historically the Fourth Amendment originated as a control on the power of the state. (*Federalist* No. 84; *Boyd* v. *U.S.*, 116 U.S. 616, (1886); *Coolidge* v. *New Hampshire*, 403 U.S. 443, (1971) and *Burdeau* v. *McDowell*, 256 U.S. 465 (1921). The jurisprudence of this Honorable Court shows an attempt to deter police misconduct through the exclusionary rule by keeping evidence seized in violation of the Fourth Amendment out of court and thereby deterring law enforcement authorities from violating the Fourth Amendment. (*Mapp* v. *Ohio*, 367 U.S. 643, (1961). *Terry* v. *Ohio*, 392 U.S. 1, (1968) *Coolidge* v. *New Hampshire*, 403 U.S. 443, (1971) reflects the latest discussion of the exclusionary rule and its relationship to the Fourth Amendment. This case concerned the use of illegally seized evidence in a grand jury proceeding. The United States Supreme court held that the exclusionary rule was only a "remedial device" (*Calandra*, at p. 348) and hence not applicable to a grand jury

proceeding. The court went further to specifically hold that: "The rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect rather than a personal constitutional right of the party aggrieved. (*Calandra*, at p. 348). This case specifically discarded the personal right theory and the judicial integrity theory and held that the sole basis for the exclusionary rule is its deterrence effect on police misconduct.

Knowledge is essential to deterrence. In order to be deterred from doing an act, a person must have knowledge of the adverse consequences of his act. A large part of the knowledge a person possesses is directly related to his basic function in society. A policeman's main function is to enforce the law. Hence, part of his knowledge consists of the Fourth Amendment and the exclusionary rule. With this knowledge (that any evidence he seizes in violation of the Fourth Amendment will be excluded from court) he is deterred from violating this rule.

In *Mapp* the court held that when the police violate the Fourth Amendment in seizing evidence, that evidence is not admissible to convict the defendant. Under *Calandra* the basis for the exclusionary rule is police deterrence. Although a teacher is an employee of the state, he is not a policeman. True, he has some functions similar to that of a policeman such as enforcement of school regulations. However, his main function is instruction not law enforcement. Therefore, the rational basis for the existence and application of the exclusionary rule to the actions of the police is absent when the rule is applied to the ac-

tions of a teacher. Evidence seized in violation of the Fourth Amendment by a policeman, if admissible in court, would promote the functions of the policeman to legally control crime. Evidence seized in violation of the Fourth Amendment by a teacher, if admissible in court, would not promote the function of a teacher to educate and instruct. Hence, the deterrence effect of the exclusionary rule will have no force or effect on the teacher.

Applying these legal points to the facts of this case, a number of conclusions may be drawn:

Although technically an employee of the state, Mr. Coy Scott was not employed in a law enforcement capacity. He had no law enforcement duties to carry out. The Fourth Amendment as enforced by the exclusionary rule applies only to state action by a state official acting in a law enforcement function. Mr. Coy Scott acted as a private citizen in searching for and seizing the marijuana in this case. As a result he had no knowledge of the exclusionary rule or the Fourth Amendment and the application of these complex rules of constitutional law to his conduct would not prevent or deter his future action. There is no evidence in the record of any prior cooperation between Mr. Scott and the police and thereby make his actions subject to the Fourth Amendment.

Issue II

Assuming that this Honorable Court agrees with the Louisiana Supreme Court that a public school teacher should be treated as a law enforcement official for pur-

pose of the Fourth Amendment, certiorari should be granted in this case to determine the important and related issue of whether the search of William Mora in this case on less than probable cause but more than mere unfounded suspicion was "reasonable" under the Fourth Amendment.

The essence of this argument is that due to the inherently different functions of a police officer and a public school teacher a lesser degree of "reasonable" should be required of a public school teacher for his actions to qualify under the Fourth Amendment as reasonable than that which is required of the police officer.

The logic of this argument is not new. In the area of stop and frisk, it is the great probability of physical danger to the police officer which allows him to search a person for weapons even though he does not have a search warrant or fall within one of the exceptions to a search warrant. Hence, in the case of a school official it is his lack of knowledge of constitutional and criminal law which allows him to justify his search on less than probable cause. This argument does not allow indiscriminate searching of students by school officials but requires that the school official point to specific facts which justify his reasonable suspicion. Hence, the school official is not required to follow complex criminal procedure which he has no knowledge of and the student's Fourth Amendment rights are given sufficient protection.

Following the same line of logic as discussed above, if the court decides to treat school officials as

policemen for the purpose of the Fourth Amendment, it should adopt the reasoning of *Tinker* v. *Des Moines*, 89 S.Ct. 733 (1969) and *Wood* v. *Strictland*, ___ U.S. ___, No. 73-1285, February 25, 1975, and formulate a less strict test than that used for policemen in deciding whether or not a search by a school official is reasonable. In both *Tinker* and *Strictland* the United States Supreme Court held that while students are protected by the constitutional rights of free speech and due process in as well as out of school, that a different standard for evaluating the extent of these rights would be used when they are exercised on the school ground. Therefore even if this court decides that students are to be protected by the Fourth Amendment from "unreasonable" searches and seizures by teachers then, this court should grant Writs of Certiorari to decide the important question of whether the test for what is "reasonable" should be different than that applied to police officers.

Applying their consideration to the facts of this case, the search by Mr. Scott of the property of William Mora, the defendant was reasonable under the Fourth Amendment for the following reasons:

1. William Mora acted in such a manner so as to arouse the reasonable suspicion of Mr. Scott. Mr. Scott testified that he saw the defendant turn his back to him and stuff something into his wallet. This action caused the wallet to become excessively large and bulky.

2. Mr. Scott had knowledge of the defendant's association with persons he knew or suspected to be drug users.

3. Mr. Scott testified that the defendant appeared excessively nervous and excited when he put the wallet inside the canvas bag.

4. Mr. Scott had some basic knowledge of drugs and drug use due to drug orientation lectures given by the school board.

While the above mentioned facts would not amount to probable cause under the Fourth Amendment if Mr. Scott were a police officer, they do add up to what can be called reasonable suspicion upon which a school teacher not trained in constitutional law could justify a search.

REASONS FOR GRANTING THE WRIT

The State of Louisiana is of the respectful belief that this case confronts the court with an important fundamental issue concerning the nature of the relationship between students and public school teachers and its result will ultimately affect the quality of public education throughout the State of Louisiana and the nation.

This decision by the Supreme Court of Louisiana is based entirely upon the erroneous interpretation by a state court of federal constitutional standards as reflected by the prior decisions of the United States Supreme Court.

This decision of the Louisiana Supreme Court places a heavy burden on public school teachers throughout the State of Louisiana who are already burdened with increasing discipline problems.

This decision of the Louisiana Supreme court is out of line with the vast majority of both federal and state decisions on this issue (See 49 ALR 3d 978 at 985; *In Re Donaldson*, 269 Cal. App. 2d 509, 75 Cal. Rep. 220; *People* v. *Stewart*, 63 Misc. 2d 601, 313 N.Y.S. 2d 253; *State* v. *Stein*, 203 Kan. 638, 456 Pac. 2d 128; *Overton* v. *Riegen*, 311 Supp. 1035; *People* v. *Jackson*, 319 N.Y.S. 2d 731, affirmed 30 N.Y. 2d 734, 33 N.Y.S. 2d 168; 284 N.E. 2d 152; *In Re State In The Interest of G.C.*, 121 N.J. Super 108, 296 A. 2d 102; *State* v. *Baccino*, 282 A. 2d 689; 49 ALR 3d 973; 79 *C.J.S.* Schools and School Districts See 493)

This decision of the Louisiana Supreme Court is in direct conflict with the logic of two major recent United States Supreme Court decisions (*Tinker* v. *Des Moines*, 89 S.Ct. 733, (1969); *Wood* v. *Strictland*, ___ U.S. ___ No. 73-1285 February 25, 1975) dealing with the public schools of the nation that although students do not shed their constitutional rights at the school yard gate, the test to be used to determining the extent these constitutional rights are to be exercised in school is of necessity and reason different from the one used outside the school.

This decision of the Louisiana Supreme Court automatically incorporated the entire law of search and seizure previously only applicable outside the school system into the school system without taking

into consideration the possible adverse effects such a decision will have within the school system on the necessity to maintain discipline and a good educational environment.

This decision of the Louisiana State Supreme Court was decided on Fourth Amendment grounds and therefore under the recent United States Supreme Court decision of *State of Oregon* v. *Hass*, ___ U.S. ___ No. 73-1452, March 19, 1975, this case presents a substantial federal question for review.

This decision of the Louisiana Supreme Court presents a substantial federal question which has not yet been considered by the United States Supreme Court. This court has rendered decisions concerning the extent to which the first amendment free speech standard applies to the public school system (See *Tinker* v. *Des Moines*, 89 S.Ct. 733, 1969) as well as the due process standard of the Fourteenth Amendment (See Wood v. Strictland, ___ U.S. ___ No. 73-1285) In addition the Louisiana Supreme Court has decided this case on a rationale contrary to that accepted by the United States Supreme Court in the cases mentioned above.

CONCLUSION

The state of Louisiana respectfully prays that a Writ of Certiorari issue herein directed to the Supreme Court of Louisiana; and that after due consideration the judgment of the Louisiana Supreme Court erroneously interpreting the applicability of the Fourth Amendment of the United States Constitution

to the actions of a public school teacher, maintaining the Motion to Suppress Evidence, and reversing William Mora's conviction be reversed and set aside.

RESPECTFULLY SUBMITTED,

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CERTIFICATE

I certify that a copy of this Petition for Certiorari has been mailed to:

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APPENDIX

SUPREME COURT OF LOUISIANA
NO. 54,884

STATE OF LOUISIANA

VERSUS

WILLIAM AUGUST MORA, JR.

ON WRIT OF CERTIORARI TO THE
SIXTEENTH JUDICIAL DISTRICT COURT,
PARISH OF ST. MARY,
HONORABLE ROBERT M. FLEMING, JUDGE.

BARHAM, Justice.

Relator was convicted of possession of marijuana, a violation of La. R.S. 40:966C, and was sentenced to six months' imprisonment in the parish jail. We granted certiorari upon relator's application to review the trial court's denial of a motion to suppress the marijuana which formed the basis of the prosecution and a motion to suppress a confession. We find merit in relator's arguments alleging error in the trial court's ruling on his motion to suppress the marijuana and we therefore pretermit consideration of relator's other complaint.

At the time that the marijuana was seized, relator was a seventeen-year-old high school senior who was participating in a physical education class at the school he attended. Each participant changed from

street clothes to gym clothes before joining in the class activities and, in accordance with a customary practice, placed his wallet and other valuables in an individual small canvas bag provided for that purpose. Once the small valuables bags were filled, they were all placed in a large duffel bag which was locked for safekeeping in the instructor's office for the duration of the class.

On the day of the search and seizure, relator obtained his small valuables bag from the instructor. The instructor testified at the hearing on the motion to suppress that the relator turned his back while filling the canvas bag, that his actions were furtive, and that he experienced some difficulty in placing his wallet, which appeared to be bulky, into the small canvas bag. Once the small valuables bag had been placed in the duffel bag, the instructor locked the duffel bag in his office. The instructor further testified that after reflecting on relator's furtive actions and considering them in light of his knowledge that some of relator's companions were narcotics users and that there was talk of the use of drugs by different student groups, he decided to inspect the contents of relator's wallet. When he opened the wallet, he found a plastic bag which contained a leafy green substance. Believing the substance to be marijuana, he summoned the school principal. The principal concurred in the instructor's belief and notified the juvenile authorities, to whom the marijuana was ultimately released. Relator's prosecution ensued and the motion to suppress the marijuana was heard and denied.

The Fourth Amendment to the United States Constitution and Article I, §7 of the Louisiana Constitution

of 1921 (in effect at the time of the search in question) safeguard persons from unreasonable searches conducted without a warrant. However, the applicability of these constitutional prohibitions against unreasonable searches and the exclusionary rule of Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) is limited to cases where the seizure is effected by governmental agencies. Concomitantly, the fruits of searches and seizures conducted by private persons are not subject to exclusion. *See e.g.*, Barnes v. United States, 373 F.2d 517 (5th Cir. 1967). *See also* Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 65 L.Ed. 1048 (1921). Therefore, before we can decide the constitutionality of the search itself, we must initially determine whether the instructor and the school principal who effected the search and seizure were functioning as private persons, exempt from the stricture of the constitutional provisions, or as governmental agents, subject to those provisions.

Principals and instructors, like others employed by the State through its school boards, are responsible for public education in this State and are charged with the responsibility of implementing the policies of the State in this respect. By state law a teacher is authorized to hold each pupil strictly accountable for disorderly conduct at school. A principal may suspend from school any pupil who is guilty of willful disobedience or who uses tobacco or alcoholic beverages in any form in school buildings or on school grounds or who commits any other serious offense. La. R.S. 17:416. Because of the function of these school officials and their strict accountability to the State, we must conclude that these school officials, insofar as they are

discharging their duties by enforcing State policies and regulations, are within the purview of the Fourth Amendment's prohibition; therefore, their students must be accorded their constitutional right to be free from warrantless searches and seizures.

We must now consider whether the search and seizure effected by these State officials violated the constitutional stricture against unreasonable searches and seizures and whether suppression of the seized marijuana was consequently mandated under *Mapp*.

The general rule is that a search conducted without a warrant is per se unconstitutional. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) * * *" State v. Tant, 287 So. 2d 458, 459 (La. 1973). However, it is possible for a search without a warrant to be constitutional, if and only if it falls within one of those categories recognized as "specifically established and well-delineated exceptions" to the warrant requirement. See Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971), citing Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). Two examples of such exceptions are searches incident to a lawful arrest and certain automobile searches.

We hold that a search on school grounds of a student's personal effects by a school official who suspects the presence or possession of some unlawful substance is not a "specifically established and well-delineated" exception to the warrant requirement and that the fruits of such a search may not be used by the

State prosecutorial agency as the basis for criminal proceedings.

For the reasons assigned, the relator's motion to suppress is maintained and his conviction and sentence are reversed.

SANDERS, C. J., dissents for the reasons assigned by Mr. Justice Summers.

SUMMERS, J., dissents and will assign reasons.

MARCUS, J., dissents for reasons assigned by Mr. Justice Summers.

REHEARING REFUSED — FEB. 21, 1975

SUPREME COURT OF LOUISIANA
NO. 54,884

STATE OF LOUISIANA

VS.

WILLIAM AUGUST MORA, JR.

SUMMERS, Justice (dissenting).

I cannot agree with the majority. I would decide this case as follows:

Certiorari was granted to review the trial judge's ruling denying a motion to suppress marijuana on the

ground that it had been obtained as a result of an unlawful search and seizure and to review his ruling denying a motion to suppress a confession on the ground that it was not made freely and voluntarily.

Defendant was charged by bill of information with possession of marijuana. La. R.S. 40:966C. Prior to trial, defense counsel filed motions to suppress marijuana confiscated by the State on the ground that it had been obtained by an unlawful search and seizure. He also filed a motion to suppress defendant's confession, alleging that it was not free and voluntary. Hearings were held and both motions were denied. After trial by the court without a jury, defendant was found guilty on December 12, 1973 and sentenced to serve six months in the parish jail. On defendant's application, writs were granted to review the ruling denying the motions to suppress the marijuana and the confession.

I.

The Search and Seizure

Defendant was a high school student on March 22, 1973 when this offense occurred. At the time he was seventeen years old. Coy Scott, the physical education instructor, a member of the high school faculty, was conducting an early morning class in physical education in which defendant was enrolled. In accordance with a practice customarily followed, before each class, as they were "dressing out", students wishing to do so placed their wallets, watches and other small, valuable personal effects in small individual canvas "valuables or P.E. bags" furnished by the school. The

bags were then turned over to the instructor in charge of the class who, in turn, placed them in a large duffle bag. This bag was then locked in the instructor's office for safekeeping while the class was in progress. Experience had taught that this practice reduced pilfering.

On the day in question, defendant obtained his canvas valuables bag from Scott's desk and furtively turned his back while inserting his wallet. Scott observed defendant's furtive actions and the fact that his wallet was bulky, causing defendant to experience some difficulty in his nervous effort to put the overstuffed wallet into the bag. When defendant turned his valuables bag in, Scott placed it in the larger duffle bag and locked it in his office. Later, while the class was in session, Scott reflected upon this incident and the fact that "during this time, there had been several of the kids speaking of the different groups using drugs", and further, because, he said, "During this time, we had had several cases of drugs being used; and, of course, we had completed a drug seminar, and we had been cautioned many times to keep our eyes open for anything that may be suspicious going on at school . . . ." In addition, he had been informed that some of defendant's friends, or students he ran with, were narcotic users.

Persuaded by these circumstances and his concern over the presence of dangerous drugs on the school premises, Scott returned to his office to inspect defendant's valuables bag. When he opened the wallet, he found a plastic bag containing a leafy green substance. Believing that it was marijuana, he put the

wallet back and reported his discovery to Dan Brumfield, the school principal. Donovan Pontiff, the supervisor of instruction, was called into the case by the principal and together, in the coach's office, the three examined the wallet which was found to contain defendant's driver's license and the green substance. Pontiff, also the school's drug coordinator, recognized the green substance in the wallet as marijuana.

Defendant's father was summoned to school. When he arrived it was recommended that he take his son to the juvenile officer attached to the sheriff's office. The principal then delivered the plastic bag containing one-half lid of marijuana and one cigarette to the juvenile officer. Meanwhile defendant and his father drove in the father's car to the sheriff's office in compliance with the advice of the school principal.

The Fourth Amendment to the United States Constitution, Article I, Section 7, of the Louisiana Constitution and the exclusionary rule of Mapp v. Ohio, 367 U.S. 643 (1961) have long been viewed "as a restraint upon the activities of sovereign authority and ... not ... a limitation upon other than governmental agencies." Burdeau v. McDowell, 256 U.S. 465 (1921). In short, these are limitations upon the exercise of State authority and they are inapplicable to private persons.

The rationale for the rule which allows unlawfully seized evidence by private individuals to be admitted, aside from the fact that it is not unconstitutional, is the notion that private individuals would not be deterred by an exclusionary rule. Ann. 36 ALR 2d 553, 559. Thus

the exclusionary rule only applies to this search by the coach and school principal if their actions be considered the actions of state officials. State v. Kemp, 251 La. 592, 205 So. 2d 411 (1968); State v. Evans, 249 La. 861, 192 So. 2d 103 (1966).

It is axiomatic that the protection of the Fourth Amendment is not restricted to dwellings. Go-Bart Importing Co. v. United States, 282 U.S. 344 (1930). A depository such as a locker or even a desk is safeguarded from unreasonable searches for evidence of a crime. United States v. Blok, 88 U.S. App. D.C. 326, 188 F. 2d 1019 (1951). Under this rule defendant's valuables bag is protected from unreasonable search and seizure.

Equally well recognized is the principle that "Students in schools as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State." Tinker v. Des Moines Community School Dist., 399 U.S. 503 (1969). This principle denies that a student sheds the cloak of constitutional protection at the schoolhouse door. To the contrary, "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." Shelton v. Tucker, 364 U.S. 479 (1960). It is essential that the youth of this nation learn that the magnificence of our Constitution is founded upon genuine rights and not mere platitudes. The Bill of Rights applies to juveniles. In re Gault, 387 U.S. 1 (1967).

Decisions of this Court are not rendered in a vacuum. I believe it to be widely accepted that school authorities are impressed with the obligation to maintain discipline over the students committed to their charge. Common experience requires a recognition that when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment will often create hazards to those in the group. Parents who surrender their children to schools in order that they may continue to develop intellectually and socially have a right to expect certain safeguards. The school environment presents "special characteristics" which must determine the light in which constitutional principles are applied. Tinker v. Des Moines, 393 U.S. 503 (1969).

It is particularly during the high school years of their children when parents are justifiably concerned that they not be unduly subjected to antisocial behavior, especially the illegal use of dangerous drugs. The inquisitive nature, daring, and susceptibility to suggestion of high school students increases the danger in this sensitive area. These conditions require that school authorities investigate any charge or reasonable suspicion that a student is using or possessing narcotics. Appropriate steps must be taken if the evidence substantiates the charge or suspicion. Unattended by vigilant school authorities imposing proper discipline and restraint, the use of drugs could proliferate like wildfire. People v. Overton, 20 N.Y. 2d 360, 229 N. E. 2d 596 (1967); reargued and affirmed 24 N.Y. 2d 522, 249 N.E. 2d 366 (1969).

It is necessary to first decide whether the school coach who made the search and the principal who

made the seizure are officials whose actions are governed by the Fourth Amendment of the United States Constitution and Article I, Section 7, of the Louisiana Constitution. The Fourth Amendment, as made obligatory on the States by the Fourteenth Amendment, protects the citizen against the State itself and all of its creatures — school boards and school officials not excepted. West Virginia v. Barnett, 319 U.S. 624 (1943).

The State and the school boards, its creatures, govern and conduct public schools. Principals, coaches and teachers are charged with carrying out the policies of the State in this respect. Every parent, tutor or other person residing within the State of Louisiana having control or charge of any child between the ages of seven and fifteen is compelled by State law to send the child to school and assure his attendance under penalty of fine or imprisonment, or both. La. R.S. 17:221. By State law every teacher is authorized to hold every pupil to a strict accountability for disorderly conduct at school. School principals may suspend from school any pupil who, among other things, is guilty of willful disobedience or who uses tobacco or alcoholic beverages in any form in school buildings or school grounds; or who commits any other serious offense. La. R.S. 17:416. And the state board of education is required to prescribe a course of study on the evils and injurious effect on the human system of the use of alcohol and narcotics. La. R.S. 17:262-265. It is necessary to conclude, therefore, that school authorities, principals, teachers and coaches, while enforcing State policy and regulations come within the contemplation of Fourth Amendment guarantees.

and that they must respect the rights of students against unreasonable searches and seizure. The identical standard is established by Article I, Section 7, of the Louisiana Constitution. In re the Interest of G.C., 121 N.J. Super. 108, 296 A 2d 102 (1972).

This does not mean, however, that the entire law of search and seizure as it applies in criminal law is automatically incorporated into the school system of this State. The Fourth Amendment's proscription that the citizen not be subjected to unreasonable searches and seizures, does not require that a reasonable search be invalidated.

It is apparent from the language of the Fourth Amendment that a valid search warrant may only be issued upon an affidavit or complaint which sets forth facts establishing probable cause. There are instances, however, in which the police are permitted to make arrests and searches without first obtaining a warrant. In such instances it is the Fourth Amendment protection against "unreasonable searches and seizures" which is directly applicable. But, because a "principal incentive" for the procurement of warrants would be destroyed if police needed less evidence when acting without a warrant, the requirements in such instances "surely cannot be less stringent" than when a warrant is obtained. Won Sun v. United States, 371 U.S. 471 (1963). It is correct to say, therefore, that probable cause is also required for warrantless arrests and searches, and the standard of reasonableness or probable cause for a search and seizure is the same for an arrest.

At the same time certain kinds of searches and seizures, because they involve a lesser degree of intrusion or interference, are permitted upon less than the traditional amount of probable cause. Camara v. Municipal Court, 387 U.S. 523 (1967) building inspections by city housing inspectors; Terry v. Ohio, 392 U.S. 1 (1968) stop and frisk; Davis v. Mississippi, 394 U.S. 721 (1969) detention for fingerprinting; Henderson v. United States, 390 F. 2d 805 (9th Cir. 1967) border search — even mere suspicion not required to search bags and vehicles; Kamisar, et aux, *Modern Criminal Procedure* p. 228 West Pub. Co. (1974).

Against this background stands the doctrine of in loco parentis recognized by Article 220 of the Civil Code:

> "Fathers and Mothers may, during their life, delegate a part of their authority to teachers, schoolmasters and others to whom they entrust their children for their education, such as the power of restraint and correction, so far as may be necessary to answer the purposes for which they employ them.
>
> "They have also the right to bind their children as apprentices."

In all schools of Louisiana it is accepted custom that the mere act of the parent in sending his child to school is implied authority to the teacher to correct the child so far as may be necessary to answer the purposes for which the teacher was employed. Op. Atty. Gen. 1934-36, p. 221.

Not only in Louisiana but generally throughout the Nation, a school teacher stands in the place of a parent to his students. He may exercise such authority and control, restraint and correction as may be reasonably necessary to enable him to perform his duties as teacher and accomplish the purposes of education. And his power and duty extend beyond the teaching and preservation of order and discipline to matters affecting the morals, health and safety of the students. See authorities cited in 79 C.J.S., Schools and School Districts, ¶ 493.

Government interest both national and state in requiring that the traditional tests of reasonableness be applied to searches and seizures is to be balanced against the compelling interest of the state in preserving the doctrine of in loco parentis in the school communities of the land; the public necessity and the fundamental social concept the doctrine represents antedating the Fourth Amendment demand its preservation. To reconcile these divergent interests and preserve the essential merits of each, in the narrowly defined area of the school community, a standard of reasonable suspicion rather than the traditional probable cause to justify a search is warranted by the "distinct relationship" between the high school official and the student. Other jurisdictions have approved such a rule. People v. Jackson, 65 Misc. 2d 909, 319 NYS 2d 731 (1971) and State of Delaware v. Baccino, 282 A. 2d 869, 49 ALR 3d 953 (1971). Cf. Mercer v. State, 450 S. W. 2d 715 (Tex. Civ. App. 1970) holding that since the principal was acting in loco parentis, he was not an arm of the government. See also 49 ALR 3d 980.

In applying these principles to the facts of this case, I am satisfied that the coach who made the initial intrusion into defendant's privacy by opening his valuables bag had a reasonable suspicion to believe that the valuables bag contained prohibited dangerous drugs.

Defendant's furtive gesture while nervously inserting his wallet in the valuables bag considered in connection with the coach's knowledge that defendant associated with drug users; the fact that "several cases of drugs being used" at the school were known to the coach; and the knowledge he undoubtedly acquired at the drug seminars invested the furtive gesture with such guilty significance that a rational suspicion existed. Thus the standard of probable cause for the search applicable to this case was satisfied. The furtive gesture has in other cases served to provide reasonable grounds for a search. People v. Orr, 26 Cal. App. 3d 849, 103 Cal. Rptr. 266 (1972); Gallik v. Superior Court of Santa Clara County, 97 Cal. Rptr. 693, 489 P. 2d 573 (1971); People v. One Chevrolet Impala, 33 Cal. Rptr. 64 (1963).

Not only is the search justified by this rational and reasonable suspicion, but the circumstances imposed upon the coach the duty to proceed as he did under his obligation in loco parentis, not only to correct the breach of discipline but to protect the student body as a whole from the unwholesome drug traffic threatening the school.

There is, moreover, an element of consent to this search which arises from the in loco parentis status and authority the parent delegates to teachers when he

sends his children to school. No one would say the parent could not make such a search, and, logically, the parent consents that this authority is transferred to and vested in the teacher. For the teacher to fail to carry out the corresponding responsibility would itself amount to malfeasance. Also to be considered in justification of this search is the fact that defendant surrendered possession of his wallet containing the marijuana to Scott the coach and with it the implied consent to inspect.

The search and seizure satisfied constitutional requirements.

II

The Confession

When defendant and his father arrived at the sheriff's office, they reported to Officer Keenze, the juvenile officer. Officer Keenze immediately advised defendant, in his father's presence, of his rights, reading to him the Miranda warnings. Questioning of defendant then commenced. He was giving a statement, when Officer Keenze heard Detective Graffeo enter the office next door. Realizing that defendant was seventeen years old and was to be accorded the same treatment adults receive in criminal matters, Officer Keenze requested that Detective Graffeo conduct the interrogation. Despite the fact that he was not to have the benefit of the law applicable to juveniles, defendant's father was permitted to remain with him during the interrogation that followed.

Detective Graffeo again advised defendant of his rights, and within ten or fifteen minutes he made a complete statement confessing to the possession and use of the marijuana and the source from which it was obtained. Thereafter the confession was reduced to writing by defendant in his own hand. The paper provided for the confession contained a printed acknowledgement that defendant had been advised of his rights under the Fifth Amendment to the Constitution as to compulsory self-incrimination, his right to counsel and his right of trial, and that what he said could be used against him in a court of law, and that the statement was voluntarily made. The statement was witnessed by the two officers and defendant's father. I quote the pertinent content of the document for the bearing it has upon the free and voluntary character of the admission.

> "I have been using marijuana for one year. I started out with Keith Clements and I smoked several cigarettes with him and bought a few from him two weeks latter (sic) bought a cupple (sic) more from him and smoked them and I was caught with a ledd (sic) in willet (sic) at school in P.E. bag.
>
> "I gave Keith Clements $10.00 for two match boxes last week at school which had marijuna (sic) in it. 3/19/73.
>
> "The marijuna (sic) I was caught with was marijuna I bought from Keith Clements."

According to the police, the entire interrogation consumed 35-40 minutes. We learn from their

testimony that defendant and his father are full-blooded Chitamacha Indians who live on a reservation near Charenton, Louisiana. The father has the equivalent of a fourth grade education. This background, it is asserted, makes defendant and his father easily susceptible to intimidation. Another factor improperly inducing the confession is said to result from the fact that the police assured them that if defendant confessed, they would go easy on him, he would be brought before a lenient judge, his sentence would not exceed thirty days and they would see to it that defendant served his time as a trustee working in the prison kitchen. Furthermore, it is contended, defendant was intimidated by the father's threat to punish him if he didn't tell the police what they wanted to know.

On the other hand, Officers Keenze and Graffeo testified positively that they made no promises to defendant and the facts support their version of what occurred. Defendant and his father went to the sheriff's office on instructions from the principal; they did so freely and voluntarily, without having been arrested or taken into custody. After arrival at the sheriff's office, defendant promptly confessed, wrote out his confession, and signed a waiver of rights after the Miranda warnings were twice repeated by the officers. The confession and waiver document was signed by defendant and witnessed by both officers and defendant's father. At no time did the father or son protest the treatment they received nor did they demonstrate any attitude except one of cooperation with the officials.

On this issue, I am satisfied that the question this record presents is one of credibility of the witnesses.

The version of the two state witnesses is supported by the physical evidence and the undisputed surrounding circumstances. Moreover, the trial judge who heard and saw the witnesses accepted the testimony of the police officers. Defendant's and his father's testimony differ only insofar as the promises they claim were made by the officers, otherwise the essential facts are not disputed.

The State has discharged its burden of affirmatively establishing the free and voluntary nature of the confession; it was, therefore, admissible in evidence. La. Const. art. I, ¶ 11; La. R.S. 15:451-52; Lego v. Twomey, 92 S. Ct. 619 (1972); State v. Cripps, 259 La. 403, 250 So. 2d 382 (1971); State v. Collins, 253 La. 149, 219 So. 2d 182 (1968); State v. Carter, 248 La. 730, 181 So. 2d 763 (1966); State v. Simpson, 247 La. 883, 175 So. 2d 255 (1965).

Society will not long tolerate the stringent and unrealistic rule of law imposed by the majority; a rule which will prohibit the control of drug traffic on the school grounds of the State.

I respectfully dissent.

UNITED STATES OF AMERICA
STATE OF LOUISIANA
SUPREME COURT OF THE
STATE OF LOUISIANA

New Orleans, 70112

New Orleans, Friday, Feb. 21, 1975

At Chambers:

Rehearing Refused

54.884 State v. Mora

SANDERS, C. J., SUMMERS and MARCUS, J. J., are of the Opinion that a rehearing should be granted.

I, Andrew J. Falcon, Deputy Clerk, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this Court.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 15th day of May, A.D. 1975.

(SEAL)

/s/ ANDREW J. FALCON
Deputy Clerk,
Supreme Court of La.